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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,609	09/15/2003	Dominic Pratt	242837US0X	8499

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EXAMINER

ELHILO, EISA B

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 08/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/661,609

Applicant(s)

PRATT ET AL.

Examiner

Eisa B. Elhilo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3/19/04 & 12/22/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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Claims 1-10 are pending in this application.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 10 provides for the use of an azo dye, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claim 10 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Charle et al. (US 3,164,522).

Charle et al. (US' 522) teaches a hair dyeing composition comprising azo dye of 2-amino-4,4'-digydroxyazobenzene (see col. 2, lines 35-36), which is identical to the azo compound of the claimed formula (1), when in the claimed formula (1), A is a phenyl radical and B is an aromatic radical of the claimed formula (B-6), wherein the reference's compound further represents the claimed formula (DS-5), in which R210, R11, R12 and R13 are hydrogen atoms and A is a substituted phenyl radical, wherein the dye is presented in the amount of 0.5 g (0.5%) which within the claimed range as claimed in claim 4 (see col. 2, Example I), wherein the composition comprises other direct dyes (mixture) of dyes as claimed in claim 5 (see Example II), wherein the amount of these mixture is 0.5 g (0.5%) which within the claimed amount as claimed in claim 6 (see Example II), wherein the composition comprising alkalizing agent sodium bicarbonate in the amount of 16.5 cc (16.5%) which within the claimed range as claimed in claim 7 (see col. 3, Example X), wherein the composition is one part composition that comprises the dye compound and the alkalizing agent as claimed in claim 8 (see 2, Examples I and II). Charle et al. (US' 522) also teaches a method for dyeing hair comprising applying to the hair the dyeing composition as claimed in claims 9 and 10 (see col. 2, Example 1 and II). Charle et al. teaches all the limitations of the instant claims. Hence, charle et al. anticipates the claims.

3 Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Carboni et al. (US 3,148,179).

Carboni et al. (US' 179) teaches a composition comprising an azo dye of a formula identical to the claimed formula (1) (see col. 10, formula 3) when in the claimed formula (1), A

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is a naphthyl radical and B is a formula (B-6) wherein the dye is presented in the composition in the amount of 1 g (1%) which within the claimed range as claimed in claim 4 (see col. 15, lines 3-5). Carboni et al. (US' 179) teaches all the limitations of the instant claims. Hence, Carboni et al. anticipates the claims.

4 Claims 1-3 and 9-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Leduc et al. (US 6,027,537).

Leduc et al. (US' 537) teaches a composition for dyeing hair comprising an azo compound of a formula (9) (see cols. 15 and 22, formula (9)), which identical to the claimed formula (1) when in the claimed formula (1) A is a substituted phenyl radical and B is a formula (B-6), in which R₁₁₄ is an alkoxy radical as claimed. Leduc et al. also teaches a process for dyeing hair as claimed in claims 9-10 (see col. 34, claim 24). Leduc et al. teaches all the limitations of the instant claims. Hence, Leduc et al. anticipates the claimed.

Conclusion

5 The remaining references listed on from 1449 have been reviewed by the examiner and are considered to be cumulative to or less material than the prior art references relied upon in the rejection above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eisa Elhilo
Patent Examiner
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August 8, 2005